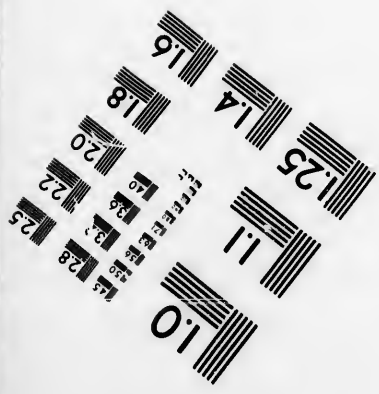
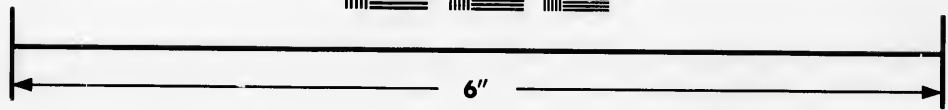
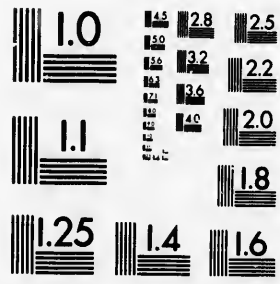


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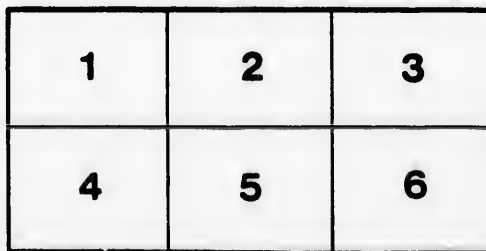
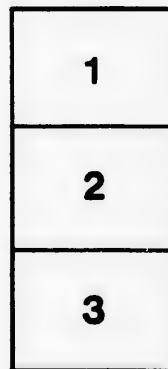
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VOX POPULI

THE
LOGS OF THE
APPROPRIATION BILL
CHARGEABLE ON THE
LEGISLATIVE COUNCIL;
WITH
AN INDICATION OF THE PROCEEDINGS
OF THE
HOUSE OF ASSEMBLY.

BY A FREEHOLDER.

Printed by

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1825.

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AN ADDRESS, &c.

THE loss of the Appropriation Bill, at the close of the late Session, has caused very general excitement. An occurrence so novel, and one whereby the interests of the Provincial public must be seriously injured, naturally produces the enquiry among those who are unacquainted with the circumstances, "How has this come to pass—is it to the House of Assembly, or Council, or to both, that we owe the loss of the bill?" To answer such enquiries—to trace to its first cause this calamitous result—to shew by whom the Legislative discord was produced, and to vindicate the proceedings of the House of Assembly, is the intent of the writer. He deprecates, however, the exhibition of angry or malicious feelings; he would appeal to the judgments of men, uninfluenced by prejudices: he feels that nothing should be said or done, that would tend to increase that discord which has been already so productive of evil; but with calm, unruffled minds, the subject should be considered. Any attempt to inflame the public would most certainly aggravate the present evil, and increase that strife which every good man or subject should endeavour to allay. It may be that *one* branch of the Legislature is wholly in fault; it may be that *both* branches are alike blameable. Let us, then, make it our object to ascertain which of these positions is correct.

We may say with truth, that among the great mass of the people the *Legislative Council* have prejudices to contend against in a case like this. We know that our minds are predisposed to favor those who are delegated by ourselves and who receive their Legislative existence from our voice; and, while with *them* we identify ourselves, while we consider them as *our* political conservators and guardians, we are prone to condemn at once any measures of either

of the other Legislative branches, which *they* may consider an invasion of their rights.—Again, we are too liable to undervalue the importance of those who form the adverse party in this case; and this, added to a feeling of jealousy, which many of us entertain towards those who are invested with their power by the Crown, and are, therefore, not answerable to us for their acts, may incline us almost insensibly to pronounce against them before we have heard the merits of the subject.—These things premised, let us guardedly and impartially examine into facts.

It has been an uninterrupted custom in this Province, since 1801, to provide for the expenses of the Speaker and Members of the House of Assembly. The sum for the Speaker has varied from £50 to £150 per annum, and for the Members from ten to twenty shillings per day, besides travelling expenses. In 1788, before any fixed provision was made for the Speaker and Members, a quorum could with difficulty be obtained in the House of Assembly, to conduct the business of the Province. It was then conceded that the payment of their expenses was absolutely necessary, and a resolution was passed as follows:

“*Resolved*, That it is the opinion of this House that the few Members attending this Session, and the difficulty of making an House, are evident proofs of the necessity of allowing to the Members their expenses whilst attending to the business of this House.”

It may be well to examine into the necessity for the continuance of this grant. There have always been some very valuable Members in our Assembly, who could not afford to serve at their own expense. If wealth is the best qualification for a representative, it would be well to abolish pay immediately; but as wealth cannot ensure *intellect* to the possessor, as it cannot *surely* bring with it an intimate knowledge of the wants and interests of a community,—so neither can it be admitted as the *best* and *only* qualification for a popular Representative. At the late General Election, the Freeholders had an opportunity of approving the services of many

who had been tried, by re-electing them; those individuals may now be called the persons of their choice, and the privilege of exercising that choice was considered an important and valuable one; and yet, had the Electors been apprised that no provision would be made in future for their expenses, and that several of those persons would be unable to serve them by reason of their lack of means, the choice would have been *restrained*; those who had always proved vigilant and serviceable, would thus have been disqualified, and the *freedom* of Election would have been turned into a *constraint* to seek among untried men of wealth for those who could best afford to pay their expenses; and as wealth does not ensure to its possessor even *one* of the most essential qualifications, ignorance, carelessness, and stupidity would, in very many instances, have been unavoidably substituted for intelligence, attention, and activity. Again, it may be observed, that as the lower House is intended as the *popular* representation, and by far the greater proportion of constituents belong to the middle and lower classes, the abolition of pay, and the consequent restriction of choice to the upper class, would cause a severance of those ties which now hold the representatives down to the people; the Democratical would rise to, and merge in, the Aristocratical branch; the equilibrium distance would be lost to the lower, and gained in the upper House; and thus the constitutional balance or counterweight would be virtually destroyed.

With these views we must be forced to the conclusion, that provision for the expenses of the House of Assembly, under the present circumstances of the Province, *is essential to the existence of the rights and privileges of the Provincial Electors, and that its abolition would very materially injure the popular representation.* For many years past it has been usual, at the *first* session of a *new House*, to pass a *Bill*, providing for the expenses of the Speaker and Members of the Assembly *during the continuance of the House.* In conformity with this custom, a Bill was passed at

the late session, providing £100 for the Speaker and £30 each for the Members, besides travelling expenses, 15s. per day. It will be observed, that these sums are less than have been allowed for many years past; and they were thus reduced, because it was thought by a majority of the House that they were sufficient to cover the *actual expenses*, which, alone, should be provided for. This *reduction* is worthy of consideration: there is nothing lavish or extravagant in the sums; on the contrary, their *abatement* evinced a disposition in the House to retrench and economise. The Bill was *novel*, only as regards the *small* amount provided; in all other respects, it was conformable to an uninterrupted custom of thirty-four years, during which time no attempt to abolish it had ever been made by the Legislative Council. This Bill was carried up on the seventh of February, and made the order of the day in the Council for the sixteenth. It was read a second time on that day, when the following Resolution was moved and seconded:—

“ *Whereas* His Majesty’s Government, upon the establishment in this Province of a Legislative Council, distinct and separate from the Executive Council, in the year 1833, did express an opinion that the Members of the Legislative Council should have their expenses paid in the same manner as the Members of the Assembly, and did accordingly recommend to both Houses the passing of a Law, providing for the attendance and expenses of the President and Members of the Legislative Council in the same manner as for the Speaker and Members of the House of Assembly; which *opinion* and recommendation this House thinks just and reasonable:—And *whereas* the House of Assembly hath not made provision for the attendance and expenses of the President and Members of the Legislative Council, agreeably to the said recommendation of His Majesty’s Government:

“ *Therefore Resolved*, That the further consideration of this Bill be postponed for three months.

Content.

“ MR. CHIEF JUSTICE,
HALLIE,
E. P. ROBINSON,
W. H. ROBINSON,
BOTSFORD,
ATTORNEY GENERAL,
HAZEN,
LEE.

Non-Content.

MR. BLACK,
SHORE,
PETERS,
SIMONDS,
ALLANSHAW.”

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This is indeed a remarkable Resolution, and it has produced a memorable effect. Here we see the first step towards the collision of the two Houses; this was the first attitude of hostility, which introduced another and another, as will be seen in the sequel.—Let the names of the *minority* on this division not be forgotten: their manly and independent conduct should ever be remembered by the country. Such redeeming spirits may be outnumbered—they may be assailed by those “who hate that excellence they cannot reach;” but in the *hearts*, in the *affections* of *freemen* their memory should ever be fondly and gratefully cherished. They saw the *unprovoked* blow of the avenger descending; they *dared* to *introduce*:—this is enough for them:—that they *failed*, should diminish nothing from their meed of praise.—But before we remark more particularly on this Resolution, let us go back to 1833, and see what were the said *Opinion* and *Recommendation*, and what was done by “both Houses” thereon.

On the 11th February, 1833, the House of Assembly was informed by Message, “That His Majesty had been pleased, by his Royal Commission, to appoint two separate and distinct Councils in the Province, to be respectively called the *Legislative* and *Executive Councils*.”

Two days after, another Message was communicated as follows:—

“ARCHIBALD CAMPBELL.

“The Lieutenant Governor informs the House of Assembly, that he has received a despatch from Lord Goderich, in which his Lordship expresses his *opinion* that the Members of the Legislative Council should have their expenses paid in the same manner as the Members of the Assembly. The Lieutenant Governor, therefore, in obedience to the commands of his Lordship, *recommends* to the Assembly the passing of a Law providing for the expenses and attendance of the President and Members of the Legislative Council, in the same manner as has been provided for the Speaker and Members of the House of Assembly.”

The House went into Committee the next day on this “Opinion and Recommendation,” and unanimously adopted the following Resolution:—

"Resolved, as the opinion of this Committee, that it is not expedient to make provision for the payment of the expenses of the Legislative Council as recommended by the Message of His Excellency the Lieutenant Governor, of the 13th instant."

We see that *prompt attention* was paid by the House to the *opinion and recommendation*, but they could not concur in the one nor comply with the other. The reasons for this decision of the House are unanswerable. Let us examine them:—The Members of the Council hold their office "during pleasure," (i. e.) so long as the King is pleased with their conduct. They are invested by the Executive with the *power, influence and honour* of their office, and, as they must value such investment, they would at all times, in all their official acts, be watchful of preserving it. Holding "during pleasure," the first and leading object with them would be, to regulate all their deliberations and proceedings with a view to conform with the wishes and interests of him by whom they were spoken into official existence; as any act adverse to those wishes and interests, by incurring displeasure, would be a breach of the condition of tenure, and render them liable to the immediate forfeiture of their office. Then it appears that the Legislative Council is not an *independent* branch of the Legislature, but *dependent* on the *pleasure* of the Government. But it is said, that they stand in the same relation to the first and third branches of the Legislature as do the Peers of England. Now every student of the British Constitution must have observed, that the *Lords* are intended, on the *one* hand to prevent the too great encroachment of the people on the rights and prerogatives of the Crown; and on the *other* hand to restrain the injurious exercise of the Royal prerogative against the interests of the people. The *Lords*, holding *for life*, can feel no apprehension of being divested of their office from having repelled the aggressions of a despotic and rapacious King, and therefore they are adapted to their constitutional position, and are always *free* to effect that for which they were obviously designed. Here

we discover the admirable balance of our mixed Government. The three branches severally possessing peculiar and exclusive means of action, and yet dependent on each other—separate and distinct in their rights and powers, and yet deriving active and efficient strength only from union: in their co-operation they may be called *omnipotent*—in divided action, *powerless*. It is truly delightful to analyse and contemplate this broad basis of British Liberty; to see reduced to practice that theory which many ancient sages, in their extreme admiration of its form, considered as Utopian—too good ever to be realized in experience.—But to return:

Do we find our Legislative Council every way adapted to the position *they* should occupy in the Colonial Constitution? Certainly not. If popular claims and prerogative rights were to meet in them, with even a preponderance of the former against the latter, we are bound to presume what the result would be. The inclination towards that power, to which they daily owe their Legislative being, would, in the event of a conflict between popular and prerogative claims, inevitably bias them towards the Crown; and then, as it is only *from the Crown* they derive their office, and as it is only on their *official duties* that they found any claim for provision, how shall the *People* be called upon to contribute that provision? The popular branch having the *sole and exclusive right of originating supplies*, it cannot be expected that that body would appropriate monies for such services, unless their constituents were consenting; and it may be safely asserted, that *the constituency of this Province will never consent to any appropriation for the Legislative Council as at present constituted*. Apart from the considerations of dependence above stated, there are other circumstances which would defeat any claim by the Council for such remuneration. If they are of that standing in wealth and influence which they are supposed to be, as the *Aristocratic Representatives* of the Province, the pittance of £50 *per annum*, which is the greatest

sum ever allowed to a Member of the other House, should not only not be *asked* for, but should not be received if offered. Twenty shillings per diem for fifty days, to provide for the attendance and expenses of the *Honorable Legislative Council*, the *elite* of our Provincial *Aristocracy*, is a sum too contemptible for bestowment, and too paltry for their acceptance. If the Council is formed, as it should be, of *men of wealth*, we should ever be cautious, lest any measures be adopted which could enable the Crown to place persons in that situation, who, lacking the qualification of wealth, and therefore not having so great an amount of interest at stake in the Province, would be a *time-serving, place-seeking* and *dependent* body, regardless of the people from whom they could expect no lucrative gift, and wholly subservient to the Crown, from whom they would expect everything. Now, if provision were made for the attendance and expenses of the Council, the necessity for its being composed of men of wealth would in a great measure cease; the Crown would be enabled to substitute the class of persons before alluded to; the Council would be *several removes nearer to the Executive*, the poize of interest would therefore be *against the popular branch*, and the constitutional equilibrium destroyed. Thus we perceive, if our reasoning be sound, that the abolition of pay for the lower, or the introduction of it for the upper House, would severally produce the like result, and therefore should be *equally resisted by those who wish well to the Province*. But there were also other causes, if any were wanting, which operated upon the House in bringing them to the above resolution of 1833. In the Council were *four Executive Officers*, who were receiving salaries from the Crown; and three of whom were also Members of the Executive Council. These four were the *Chief Justice*, with a salary of £900 per annum; the *Commissioner of Crown Lands*, with a salary of £2000; the *Auditor General* and a *Commissioner of Quit-rents*. However, had this Executive influence not been there, other and suffi-

cient reasons existed, in addition to those already assigned, for the proceeding of the lower House. The Members of that House, as well as the Province at large, were dissatisfied with the principles whereon the *Executive* Council had been separated and distinguished from the *Legislative*. A very important change had been made in the Colonial constitution, when no change was required by the Country, and when the local Government had not been consulted as to the *necessity* for such a reform. The *fiat* of a Colonial Minister, in acquiescence, no doubt, with a *secret* and *interested* personal application, was the only warrant whereon established and approved systems were arrested in their operation, and whereby a satisfactory polity was subverted. Not only so, but when five persons were to be chosen and set apart, for the purpose of advising His Majesty's Representative in all cases of Colonial importance and interest, and when those *select few only*, were to be invested with the right of succession to the Provincial Government, in case of the death or absence of the Commander in Chief, to the entire exclusion of the rule of proceeding which had prevailed since the establishment of the Colony, one would suppose that *age* and *experience* would have been regarded as the *principal* and *best* qualifications for such an important post; that *seniority* of service and rank would have been the rule of selection: yet, strange indeed to say, the *seniors* were passed over—the Minister (wise man) selected *three who had never served at all, in any of the public Councils of the Province*, and *two* who were among the *juniors* in the Legislative Council, and in *neither of whom the public had any confidence*. Now we may safely assert that this revolutionary change was not made without previous recommendation from this country; and that the Minister was made acquainted by a like recommendation with the persons who were thus transferred to the supreme Council, *quasi per saltum*, over the heads of their more deserving because better qualified seniors. By whom, then, we may ask, were these re-

commendations made? We say, not by His Excellency; for it was authentically asserted through the Country, (and we might give the *source* of the information,) that one of those very select persons had received the intelligence from England *before His Excellency had heard of it*, and that His Excellency *first heard of the change when the Royal Mandamus arrived!* Then, as the Minister could not and would not of his *mere motion*, have laid the axe at the root of the Colonial constitution, some *illegitimate* influence must have been exercised, and by some one who was personally interested in the change. *This was the case*; it cannot now be doubted; and when the House of Assembly *knew* all this, when they saw *fidelity, age, experience and wisdom, thrown behind by the ambitious bound of those who were far less deserving of pre-eminence*—when the House of Assembly *knew* that the duties of the Legislative Council had been discharged for half a century in the Province to the universal satisfaction of the country, and without any provision having been made for the expenses of that Council, and that *now* the demand for provision was alleged to be founded on *that very impolitic proceeding of separation and preferment* which we have mentioned—when the House reflected on all these points—how could they but act as they have done? *It was impossible* that, as men of *British feeling*, they could have acted otherwise.—While we are on the subject of the division of the Councils we may remark, that the Legislative Council, aware of their dependence on the *will and pleasure of the Crown*, and being desirous of holding their office by a more constitutional and independent tenure, addressed the Throne in 1834, praying, among other things, to be appointed *for life*. To that petition they received for answer, at the late session, from Mr. Secretary Spring Rice, that “His Majesty would not be advised to accede thereto.” In the same *ministerial* communication is the following remarkable passage, assigning the *principal cause* for the division of the two Councils:—

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"His Majesty's decision was mainly influenced by the reflection, that this new arrangement might enable him to bring the Executive Government of the Province into that free communication with the House of Assembly, which is on every account so desirable. By calling some Members of that House to the Executive Council, a channel for constant and unrestrained intercourse was opened, from which it seemed reasonable to anticipate very considerable public benefit. Nothing has hitherto occurred to shake the foundation on which this opinion proceeded."

Now we see that the *main intent* of His Majesty has been utterly *defeated*, as there is not *one* of the Executive Council who ever *was* or ever *can be* a Member of the House of Assembly. *No Member of that House has been "called to the Executive Council,"* and that "channel for constant and unrestrained intercourse" from which His Majesty's Minister anticipated "very considerable public benefit," *has not been "opened."* How is it that Government designs are thus openly frustrated? How is it, that he who can call our wise ones by their names, and decide on the necessity of a radical change in the Colonial constitution, cannot, by virtue of the same power, see the violation of his avowed purpose?—Was it that Mr. Rice was driven, by the pointed address of the Legislative Council, into the adoption of reasons which had never once before occurred to him, as affording the only tenable justification for the act of which they complained? This, we suspect, was the case; and now we see that which "mainly influenced His Majesty," unblushingly dishonoured and defeated in practice.—Are we as a people to be *mocked*? Must we submit to *one* state of things, from reasons which are assigned for *another* and a *different course of proceeding*? No: with these glaring inconsistencies, how *could* the House of Assembly pronounce their *approbation* of the Ministerial acts, in reference to the Councils of the Province, by making a permanent pecuniary provision, which was asked for *only in consequence of those acts*?

To return, now, to the "*opinion and recommendation*" on which the Legislative Council found their claim. It cannot be said that the House of Assembly

should have implicitly adopted the *opinion* of my Lord Goderich, or complied with the *recommendation* of the Lieutenant Governor thereon. *Recommendations* from the Crown are always *deliberated upon* and *duly considered* by the Commons House; but they are *not always complied with*. If the *recommendation* involve the interest of another Legislative branch, it were advisable for the Commons, ere they decide, to consider, whether their compliance could not be compelled, by the interested body subsequently asserting their right to negative, in the rejection of a provision which had received the prescriptive approbation of the whole Legislature, and in which the Commons are more immediately interested. If this could be *safely* and *properly* done, the Commons must ever legislate on such recommendations with a view to gratifying the wishes of the Crown, and *thereby* preserving their own interests; which policy would throw down the main pillar of their support, cause them to be shorn of their strength, and render them weak as other men. As such effects, and the causes which produce them, are to be deprecated, so also must those who attempt to introduce such a state of things into our political system be condemned as public men, either for their disaffection or their ignorance.

The House of Assembly, having duly exercised their deliberation and disposed of the said Messages, as of right they could do, we shall of course be surprised, if we discover in the sequel that an attempt has been made, by the persons interested in the said Messages, to coerce the House into a violation of their Resolution of 1833, and to compel a compliance with the *opinion* and *recommendation*.

We have already seen the Resolution of the Council on the rejection of the Members' Pay Bill, (so called,) at the late session. Before we proceed to anatomise that Resolution, it would be well to remark, that although transcripts of the same Messages were laid before the Council in 1833, they did not put anything on *their Journals* as expressive of *their opinion* there-

on; not even that they *then* thought the *recommendation* "reasonable and just"! Was it the case, that they so well knew their bounds in carrying into effect the "recommendation," that they could not *legitimately* move in the matter until they had received an impulse from another quarter? That they were constitutionally powerless and inactive in effecting the desired consummation, until *another* branch had given them whereon to act and deliberate? Doubtless this was the case. To have voted a compliance in the Council with the "recommendation," before it had been acceded to by the lower House, would have been like commencing at the ridge-pole in the erection of a building; and the Council well knew, that any provision on the said "recommendation" *must originate in another quarter or not at all*. Again, it is not to be omitted, that the *session of 1834* passed *without any claim having been made by the Council*, and it was therefore vainly thought that the "*Opinion and Recommendation*" would never again be raised. It remained, however, for the session of 1835 to effect the resuscitation, and to embody the reclaimed spirit, into what is now emphatically called "**THE RESOLUTION.**"—The preamble to this document purports to contain full and *sufficient reasons* for the Resolution deduced therefrom. And so it should. The *Bill* before them contained no *negative* enactment that the Council should *not* be provided for, but was *positive* in its provision for the Speaker and Members of the House of Assembly. The Council do not recite that the *sums* provided *are extravagant*; they do not recite that *no such provision is necessary*, neither do they say that there is *one section or provision* of the *Bill* which is *intrinsically objectionable*; and yet, **THEY REJECT THE BILL!** We say that there is not *one expression* in their recital, which can be *strained* into a justification for the *Resolution*. In one respect it is fortunate that the Council thus assigned their reasons for the rejection; for it can now be seen by the world *whether their Resolution* is "*reasonable and just.*" The following

recital would have been quite as justificatory of the Resolution as their own.—“Whereas the Lieutenant Governor has recommended that provision be made for *fitting up and repairing the Supreme Court*, which recommendation this House thinks reasonable and just; and whereas no provision hath been made in pursuance of the said recommendation; *Therefore Resolved, &c.*” One recital is as much a *reason* for the *Resolution* as the other; and yet, on this alone, away goes the Bill making provision for the expenses of the lower House; not, as we have said, because it contained any thing objectionable, but because it was not, in fact, *another Bill*; not because the appropriation was too *extravagant*, but because it was not *more so!* This Resolution has but one parallel in the Journals of any British Legislature, and that is, a resolution of a similar texture and complexion, and bearing the impress of the same framer, which was also adopted by the Council at the late session, on the subject of the appropriations to the Clerks and Clerks-Assistant of the two Houses. It must appear evident to every impartial reader, that no motive arising out of a consideration for the *public good*—that no incentive connected with the preservation of the *general weal*, could have influenced the Council in their adoption of the *Resolution on the Members’ Pay Bill*.—What then, we may ask, was the motive?—It is *too obvious to be doubted*. Let every man judge for himself—the writer forbears. He feels assured that the same Resolution would not *now* find a majority in the Council; but, on the contrary, that a majority of that body would this day, if they could, obliterate it from their Journals, and bury it in eternal oblivion. The effects of the proceeding, however, cannot *now* be forestaid; penitence for the act may deserve forgiveness, but pardon cannot prevent the *evil consequences* to others. The sin was committed at the altar, and an opportunity was immediately afforded for a full oblation where it might have been made; but that occasion was allowed to pass unimproved, nay, rather, to bear away the aggrava-

tion of a repetition ; what boots it, then, that they would *now* atone, when the altar is taken down and there is no place for the sacrifice ?

After the Bill was thus ceremoniously, but unreasonably rejected, and its fate was ascertained by searching the Council journals, very great and general excitement was produced in the lower house. They saw with surprise the position of the Council ; they saw in THE RESOLUTION a palpable attempt to coerce the House into a provision which they had resolved not to make ; they saw that if the Council were tamely submitted to, and no other effort were successfully made to provide for their own expenses, *the complexion of the Provincial Representation would be changed*,—wealth would be substituted as the chief qualification,—and that this was to be brought about by the act of *dependents on the Crown*—by the fiat of men of *wealth* or *supposed* men of wealth. Some Members feared a collision if ulterior measures were adopted ; others, (and these formed a large majority,) while they deprecated a collision, alleged that the House should maintain their old position of 1801, that that position had been attacked, and that every constitutional method of defence should be adopted ; that the first aggression having been wantonly made by the Council, the House were not *tamely to give way* : *theirs* was not the invasion, but the defence ; and if they evinced a firmness of purpose and a disposition to repel, they might yet retain their *old and hitherto unassailed position*.—With these views, the House agreed to send up a *Resolution of Appropriation*, granting the same sums to the Speaker and Members respectively which had been provided in the *Bill*.—This was done : upon the discussion of this resolution in the Council, the majority lost one of their former supporters, who was gained by the minority. This was an instance of magnanimous, of noble concession. Individual considerations of pride were lost in the broad field of legislation ; and that gentleman not only saw his error, but he possessed the self-control which enabled him to confess it.—

"He that is once deceived may plead a venial error; but he who gives himself to be a fool twice duped, has nothing but his folly to excuse him." While it may be said that instances of such noble conduct are of very rare occurrence, it may also be asserted that he who has in this case manifested it, merits from every generous mind unmeasured commendation and praise. But the accession of *one* to the minority could not save the resolution: it was negatived, and its rejection communicated to the lower house. What was now to be done? The necessity for the usual provision, to preserve the Representation in its healthy and effective state, was admitted by every Member; and the only point on which there existed a difference of opinion was, *how* and *when* the House should re-assert the claim. Some thought that no further attempt should be made to obtain the grant until another session, when they would be disposed to go every length to procure the provision. A majority, however, were for *immediate* measures, if any other than had already been adopted could be constitutionally resorted to. Some were for including the rejected provision in the "Great Road Bill," with the grant to the "Savings' Bank of St. John." Others insisted that its proper place was among "the ordinary services," and that it should be included in the Bill providing for those services; while others were of opinion that *all the appropriations should be sent up in one Bill* with the rejected grant. While these various opinions were floating through the House, the attention of Members was drawn to the following logical and nervous Resolution, which was submitted and adopted.

"On motion of Mr. BROWN:

"Whereas the House of Assembly of this Province possess the sole right of granting public monies and of modelling the supplies as they think proper: and whereas an annual sum for defraying the expenses of the Speaker and Members of the House of Assembly while attending the General Assembly has invariably been granted and allowed and agreed to by both branches of the Legislature for a period of more than thirty-five years; and whereas the discontinuance of such annual allowance would unquestionably

limit the Freeholders in their choice of Representatives in the several Counties throughout the Province to such persons only who could afford to give their time and bear their own expenses during the sitting of the Legislature, and would therefore deeply affect the elective franchise, and the rights, privileges and liberties of His Majesty's subjects within this Province; therefore

"Resolved, That this House cannot discontinue the aforesaid Grant without abandoning some of the most essential rights and privileges of His Majesty's loyal and faithful subjects in this Province: and further

"Resolved, That the aforesaid allowance be included among the supplies of the present session."

The preamble and the first resolution were fully concurred in by every Member; but on a motion being made to strike out the latter resolution, a majority of the House decided in the negative, and both were adopted. The preamble and the first resolution having been supported by previous arguments, let us now look to the propriety of adopting the second resolution.

We have seen that the reasons assigned by the Council for the rejection of the *Bill* were altogether insufficient, although alleged as a justification of that act. The Council might then have acted on grounds which had been concealed from view; *latent causes* might have induced them to exert their negative power; at all events, one thing was most apparent to every person of any Parliamentary knowledge, that the *ostensible* and *expressed reasons* of the Council could never bear the test of a *scrutiny*, and would be pronounced by the public as *frivolous* and *inappropriate*. If no *latent* reasons existed, every opportunity should be seized to assail them, as they must therefore ultimately yield; if, on the other hand, any *more tenable* causes were kept from view, every constitutional means should be instituted to drag them to light. Should the House of Assembly then have *passively submitted*? No: their submission would have given confidence to the adverse party, and from their present weakness and imbecility, the Council would derive additional strength for a renewal of the struggle at the next session. Had the

lower House than any other *alternative remaining*, whereby to re-assert their just claim, and again to test the adherence of the Council to the principles of **THE RESOLUTION**, or to call forth the hidden causes, if any, which had influenced them in their repeated opposition? An alternative, and a *constitutional* one, was at hand. The falchion was there and there also was the arm. The alternative was adopted: it was resolved to include the provision for the Speaker and Members in the *supplies*, and to send *all the supplies of the session to the Council* in **ONE BILL**. This was not done, however, without opposition. It was contended that such a proceeding would be inconsistent; that the House having sent up their appropriations by resolution during the session, it would be inconsistent to adopt the mode by resolution for *one part*, and the mode by Bill for *another*; and it was further contended, that the Council would be bound in honour, and out of respect to themselves, to throw out the whole Bill, when it contained that which they had already twice rejected. The opposition did not stop here: it was further contended that a great many appropriations for various purposes which had been disallowed by the Council should be *also* included in the Bill, and could be inserted with as much propriety as the provision for the expenses of the Speaker and Members, and that, by omitting these rejected appropriations, the House would also be acting inconsistently. In answer to these oppositions it was maintained, that the mode of sending up by Resolutions was only *permitted* by the lower House as *accommodative to the Council*, and was collateral to, and independent of, the mode by Bill; that the *right* of sending up a Bill was still, as ever, in the House, and as a proof that of this right they had never been divested, the House had always incorporated the appropriations which had been confirmed by the Council in Bills, had *gone into committee* on the same, and had sent them up *engrossed*—one for the “ordinary services,” another for the “services therein mentioned,” and another for the “Great Roads of

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communication throughout the Province." As to the inconsistency of adopting different modes for different appropriations, it was contended, that if two modes were allowed by our Parliamentary practice for the attainment of a like end, they must comport and consist with each other, and that the House could lay down one mode and resume the other *whenever they deemed it expedient*. As to the probable fate of the Bill in the Council, it was urged that the lower House should not act in reference to what another House *might* do, but should act for themselves, wholly in reference to the *importance* of the *principle* which they wished to preserve inviolate, and also that the country should know how far the Council was resolved to carry the *extraordinary principle* of the RESOLUTION; and as to the Council having already rejected the provision in another shape, it might have been said, that the proceedings of that body in March 1820, shewed that their decisions were reversible at the same session, for on one day they unanimously rejected the *Bill*, as at the late session, accompanying it with a resolution "that the granting of remuneration to the Members of the House of Assembly at so high a rate as twenty shillings per day was a lavish and improvident grant," and twelve days afterwards they concurred in a *Resolution* of Appropriation, *providing the like improvident and lavish sum as the bill!* The language of the three professional dissentients, in their protest on that occasion, "that resolutions when adopted *remain of record* upon the journals, "and form an irrevocable *judgment* on the subject matter in question," smacks too much of *Tidd* and *Impey*, and is unfit for the Hall of Legislation.

As to the last point of opposition; that *other* rejected grants had an equal right to be inserted, it was answered, that if it could be said of them, or any of them, as it was of the provision for the House, "that the discontinuance of the allowance would deeply affect the *Elective Franchise*, and the rights, privileges and liberties of His Majesty's subjects in this Province," then they had an *equal right* to be again taken up.

But this was being ultra-generous in the minority; they did not urge this because they ever wished, or ever expected to succeed, in having all the rejected grants inserted; it was done solely with a view to weaken the majority in their intention, by persuading them that *if one grant were inserted, all should be*; and thus, it was thought, the majority would be drawn from their purpose, and the approaching crisis would be avoided. Fortunately for the rights of the people, the majority were not brought over; they adhered firmly to their object,—the *re-assertion of their just claims*; a bill was passed, including all the supplies, and sent to the Council for their concurrence. The lower House had thereby done *all in their power to make provision for the public service; they had passed all the supplies; and the bill, with all the ill consequences which might follow its rejection, was left with the Council.* The representatives of the people who furnished the *means*, had proposed the *end*; they who paid the tax had appointed the mode of expenditure, and it was to be seen whether individual *esprit du corps* was to *overturn every consideration for the public good* in another quarter.

One or two respectable and intelligent persons, not of the house, suggested the propriety of not adopting the extreme measure of *the bill*, but to allow matters to stand as they were until the next session, and in the mean time to lay an address at the foot of the Throne, submitting the differences which existed between the two houses for the royal arbitration; and that the lower house must in this way ultimately triumph in gaining their point. Now, how could his Majesty influence the Council to yield and abandon their present position? This is worthy of consideration. The Legislative Council is *supposed* to be an *independent* branch of the Legislature, and should not be dictated to by any other branch. Such a thing as a *command* from either the first or third body would be properly considered a breach of privilege. Now had an address been presented to his Majesty, and a decision been hereafter given in favor

of the lower house, what would then be the situation of the *independent Council* who hold "during pleasure?" They would certainly be between the horns of a dilemma; for were they to yield to the dictation of the Crown, it would be that servile acquiescence which would be far from proving their *independence*; and if, on the contrary, they should persist in their opinion and turn a deaf ear to the Crown, they would incur displeasure and risk their frail hold of office: so that in either case the result would not be at all calculated to raise that branch either in their *own* or in the public estimation.

Then the lower House, impressed with these views, could not consistently attempt to bring the influence of the Crown to bear on those, who, they were willing to believe, constituted an *independent* branch of the Legislature.

The *Appropriation Bill* arrived safely in the Council, and was submitted to them for their concurrence.—The pleadings were read; there was a surplus allegation; a motion was made for a non-suit, and carried on the following grounds:

"Resolved, That this Bill contains a Grant which was not concurred in by this House when sent up in the form of a Resolution of appropriation, and the combining an appropriation upon which this House had passed its negative voice, in the same Bill of Supply with the appropriations in which this House had concurred, is an invasion of free deliberation in this House, which cannot under any circumstances be submitted to, without sacrificing the principles of the Constitution, and the independence of this House."

CONTENTS 9.

NON-CONTENTS 4.

And the further consideration of the Bill was then postponed for three months:—Contents 11—Non-Contents 2.—THE APPROPRIATIONS MADE BY THE LOWER HOUSE were thus, by one fell swoop, OVERTURNED BY THE COUNCIL. They had abandoned their first position—the principles of THE RESOLUTION were here forgotten; and that which they had brought upon themselves they complain of, as an "invasion of the rights of free deliberation"! Why did they not still recite, that no provision was made for their expen-

ses? No: they thought they had discovered grounds more tenable, of which they would avail themselves. Let us examine:—

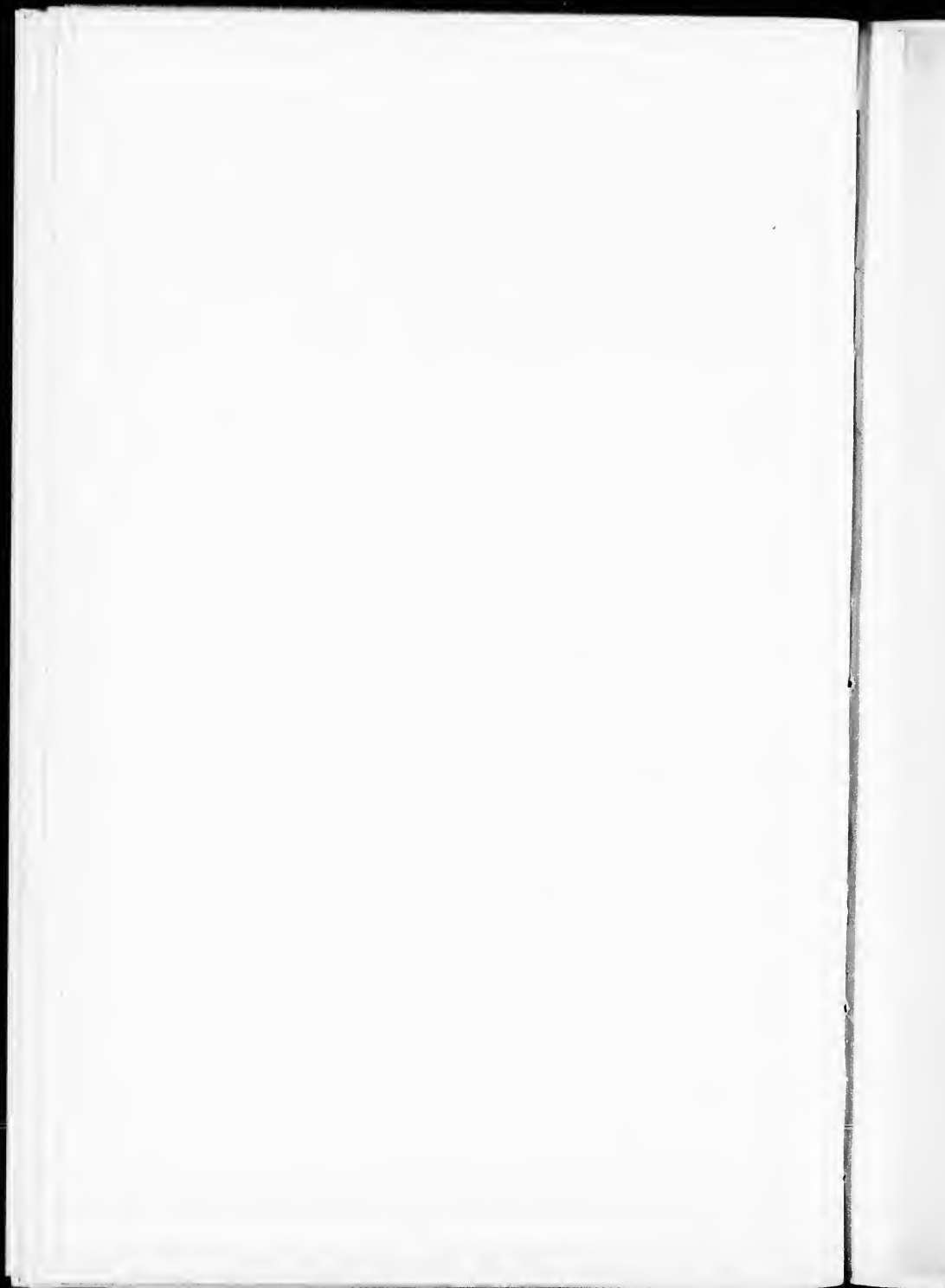
The provision for the expenses of the Speaker and Members had come before the Council in three ways:—First, by *Bill* for that purpose only; secondly, by a naked *paper Resolution* preparatory to being engrossed in a *Bill*; and thirdly as a separate *section* of a *new Bill*, which *had not yet been before them*.—Had they recited their decision on the first measure, it would certainly have approached nearer to a justification for this act than the recital of their rejection of the *Resolution*, because the first measure was by *Bill*, as the last:—but the truth is, an *ex-post-facto* disapprobation of the principles of *THE RESOLUTION* was at this time becoming general, and they would not have again based any, the lightest, proceeding on so frail and unstable a foundation; and therefore, as they do not refer to their first negative act, let us see how far they are right in the principles of their *last Resolution*.

The mode of sending up appropriations by resolution, we have before seen, was adopted by *permission* of the House as *accommodative* to the Council. If an appropriation were sent down *concurrent* in by the Council, could the House *then* lay their hands on and reject it? Doubtless they *could*; and therefore it is not like a *Bill* which has passed both branches, but has qualities and rules of proceeding peculiar to itself. While it is unparliamentary during the same session to bring forward again *in the same shape* a subject which has been once negatived; so we say it is unprecedented to bring forward again a subject which has been once passed through both branches: once finally passed, it is beyond their reach or revocation until another session. Now the appropriations first pass both Houses in *Resolutions*, are then metamorphosed into *sections* and *again pass both Houses in Bills*. It is well known that any bill, while before the house, may be modified, altered and amended, and therefore the Appropriation Bills are within this

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Rule. If so, the decision of neither House on the resolution of appropriation could be considered final and unalterable. The mode, therefore, by resolution, appears to be collateral and anticipatory, and is intended as a *feeler* for the opinion of the upper House, a kind of conventional method in this Province of forestalling the opinion of the Council on separate items, so as every thing may be done by the lower House (*consistently with the preservation of their rights and privileges,*) to conform with the anticipated opinions of the upper House, and thus to insure the subsequent passage of the Bills which embody the supplies.

If the Council reject a RESOLUTION, it does not follow that the lower House is bound to omit it in the main proceeding by BILL. This should be clearly understood, as it must hence follow, that there was no invasion of the rights of free deliberation in the Council, in the adoption, by the House, of a proceeding *strictly parliamentary*. Now the Council say in their *last* Resolution, that "the Bill contained a grant which was not concurred in by that House when sent up in the form of a resolution of appropriation"—but the grant was in a *different shape*; it was no longer a *resolution*, but a *section of a bill*, and that, too, a *money bill*, and although the grant is the same as was contained in the *Resolution*, yet the Council had not rejected it in its final and legitimate form by BILL: again they say "the combining an appropriation upon which this House had passed its negative voice, in the same Bill of supply with the appropriations, in which this House had concurred, is an invasion of the right of free deliberation in this House."—"Free deliberation!" A word badly chosen; "*separate*," they should have said. But all the other appropriations in the Bill had been concurred in by the Council, and yet, strange to say, they had not been *finally passed* in either House, or they could not have been brought up a *second* time. This shews the peculiarity of which we have been speaking; that the Council may concur in a Resolu-

tion of appropriation and *not pass* the appropriation, and we remark that a very wide distinction exists between the *Resolution* to appropriate and the *actual appropriation* itself. The Council themselves cannot deny the right to the lower House of sending up *all the appropriations by Bill in the first instance*. How would they, in such case, find "their right of free deliberation"? A much greater invasion would *this* be, and yet the House have an *inherent, a vested right of doing that which would be an invasion of the "free deliberations" of the Council!*—Strange paradox!—The insertion of *one* appropriation in which the Council had not finally concurred is an invasion of the right of *free* deliberation, and yet the insertion of *all* the appropriations without the previous concurrence of that House would be strictly parliamentary, constitutional, and correct! They say further, in the last Resolution, that the invasion "cannot under any circumstances be submitted to without sacrificing the principles of the constitution and the independence of this House."—It would be a sad thing indeed to sacrifice their independence, of which every one must have formed such exalted notions from previous examination: and as to the *principles of the constitution of that House*, we think that those *defined* principles upon which they have been said to be constituted, have been in so great a degree *already sacrificed in practice*, that one is at a loss to know what are the *surviving principles*.—To the argument:—We say that the *approval* of a *Resolution* of appropriation in the Council is not *final*, but *preparatory*; neither is the *rejection* of a *Resolution*, *conclusive*. It would certainly be conclusive against the passage of the *same Resolution* again at the same session; of this there can be no doubt; but the lower House did not send the same or even a similar *Resolution* again, but sent up a *Bill*, with enacting clauses in the usual form, wherein was a *section* making provision for the Speaker and Members. Independently of this grant coming before the Council in a *different shape* from what it had before, and there-

fore being entitled to a re-consideration, waiving, we say, this view of the case, it may be said that the previous non-concurrence of the Council was not *final*, and therefore not constitutionally preventive of the introduction of the provision in the Bill; which clearly proves that it could have been submitted to without "sacrificing the principles of the Constitution and the independence of that House." Nevertheless, away went *all the appropriations for the year, to save those principles and that independence!*—To whom then do we owe the loss of the Bill? Is it to the Council or the House of Assembly? Who took the *first step* towards the loss? Who *first* broke in upon old, and, we may say, prescriptive rights and usages? Who first declared by their act that they would sacrifice the "principles and independence" of the representative election—or—compel a compliance with their wishes?—To all these we answer—**THE HONORABLE THE LEGISLATIVE COUNCIL, the supporters of THE RESOLUTION!**—And who repelled this *bold and daring attack on the people's rights?* Who declared that they would not "wear the yoke of servile bondage"?—We answer—**THE HOUSE OF ASSEMBLY, THE POLITICAL GUARDIANS OF THE PEOPLE!** *They* have asserted their independence, they have acted as becomes "men who know their rights, and, knowing, dare maintain." **THE APPROPRIATIONS WERE PASSED BY THE HOUSE OF ASSEMBLY: THEY WERE THROWN OUT AND LOST TO THE PROVINCE BY THE LEGISLATIVE COUNCIL.**

Reader, you have heard all the facts of the case; if you please, reject the arguments, and reason, deliberate, and judge for yourself. The time has yet to come, when the firmness and independence of the House of Assembly must undergo a more severe test, when their adherence to the principles of their late proceedings will be tried as by fire. They are now mingling with their constituents; they will hear the complaints of the suffering servants of the public, whose wages have been so recklessly and unreason-

ably withholden. They will have their ears assailed with the complaints of the poor industrious settlers, whose roads are impassable; they will doubtless have their sympathies awakened by these and such like lamentations; and, on the re-assembling of the Legislature, considerations of humanity *may* stifle the call of duty and the voice of Liberty. But what is a year or two of suffering compared with a life of slavery? Who would not rather "die the last of British freemen than live the first of British slaves"? Who would not endure temporary privation and poverty for the preservation of those rights and privileges which were bought by our ancestors with their lives? Shall we turn *recreant*, and prove unworthy of our sires? No—but let the sacred deposit from them received be handed down inviolate to posterity: let the Representatives of the loyal commons of this Province maintain their constitutional position, *and let it not be wondered at, that they who have troubled the waters are lost in a vortex of their own creation.*

A FREEHOLDER.

FREDRINGTON, MARCH 24th, 1835.

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